

**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

IN REPLY REFER TO:
1800B3-TE

Carol Long
Revenue Agent
Department of the Treasury
936 Silas Deane Hwy.
Gp. 1210
Wethersfield, CT 06109
Attn: E:1215:CL

OCT 07 1993

In re: Your letter of June, 16, 1993
 regarding buying and selling
 of broadcast licenses and
 stations.

Dear Agent Long:

Your letter dated June 16, 1993 to Martha Contee, Chief of the Commission's Public Service Division, has been referred to me for response. I would like to clarify some of the FCC rules that govern licensees' property interests in broadcast licenses and stations.

Your letter presents a number of hypothetical situations, each of which involved the separation of a license from the station that is owned by the licensee. Specifically, you ask: (i) whether someone could buy a station without buying the associated license, and then apply for a new license directly from the FCC; (ii) whether a seller could sell its station but keep the license, and the buyer then apply to the FCC for a license to operate the station it bought; (iii) whether a seller could keep their FCC license separate from the sale of the station and then sell the license separately to another party who would build a competing station, and; (iv) whether the seller could keep their license separate from the sale of the station and then build their own station to go with the license.

The Commission generally will not permit the sale of a "bare license." See, e.g., Edward L. Mulrooney, 13 FCC 2d 946 (1968); Radio KDAN, 11 FCC 2d 934 (1968); recon. denied, 13 FCC 2d 100 (1968); aff'd on procedural grounds sub nom. W.H. Hansen v. FCC, 413 F. 2d 374 (D.C. Cir. 1969). Further, upon sale or transfer, the license generally follows the assets and the seller retains no right in the license and retains no future rights to the license. See 47 U.S.C. §301 and 47 C.F.R. §73.1150.

You should note, however, that situations can arise in which most of the physical assets of a station may be foreclosed upon, repossessed, or voluntarily sold, but the licensee acquires new equipment and constructs and continues to operate as authorized under the terms of the license. In such a situation, the buyer of the equipment would have only the physical equipment and would have no right to the underlying license or the right to apply for a facility which would be in conflict with the licensee's operation. Likewise, a licensee that retains some equipment, even though most of its physical assets are foreclosed upon, repossessed, or sold,

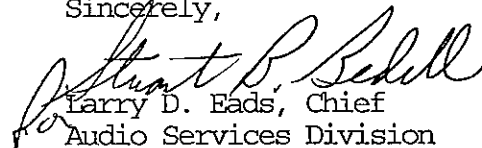
would not be limited by the "bare license" policy, and would be permitted to assign the license and the remaining assets to a qualified new party who demonstrates the availability of equipment to operate the station. In such a case, the buyer of the "old" physical plant has no right to the underlying license of those facilities.

The Commission, in cases of federal and state bankruptcy or general receivership proceedings, in which all creditors' interests are represented, does permit trustees or receivers to be granted consent to acquire licenses on a temporary basis pending disposition of station assets, as is the case with respect to executors, administrators, etc. These are instances where the physical assets pass by operation of law. They would be of little value, comparatively speaking, if the Commission did not permit the operating authorization to accompany them pending ultimate passage of all to a qualified applicant. Such proceedings are to be distinguished from the situations where holders of mortgages on stations' physical assets attempt to have that encumbrance apply to the license as well to as to be able to acquire an operating station. That is not permissible, and such a result can only be brought about if there is in addition an agreement between the parties (1) to put up the station for public sale in the event of default, and (2) to join in the execution and filing of an appropriate application to the Commission for its prior consent to the station's acquisition by the successful bidder.

Finally, in a telephone conversation with Michael Wagner of the Audio Services Division Staff on Monday, September 20, you indicated that one of your primary concerns was the valuation of broadcast licenses for income tax purposes. The "Omnibus Budget Reconciliation Act of 1993," signed into law by President Clinton in August of 1993, created Section 197 of the Internal Revenue Code, giving broadcasters the right to amortize the value of a broadcast license (and other "intangible" assets such as goodwill, patents, etc.) over a 15-year period from the year of acquisition of a broadcast station. See H.R. 2264, 103d Cong., 1st Sess. (June 10, 1993) at 1389-1411, amended in H.R. 2264, 103d Cong., 1st Sess. (June 29, 1993) at 616-639. Therefore, while the Commission will not permit the sale of a "bare license," it appears that broadcasters may now allot a portion of the purchase price of a radio station to the license. Any contrary indication by Mr. Wagner should be amended in light of the changed tax laws.

I hope this has cleared up some of these issues for you. If you have any further questions about this subject, please do not hesitate to contact any of our staff attorneys at (202) 632-3954.

Sincerely,


Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau